HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Petition No.14120 of 2006

Between:

Neredumilli Manikyam,

… Petitioner

And

The State Election Commissioner,
Secunderabad and others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Shri Mohammad Saleem

Counsel for Respondents No.1 &2: Shri V.V. Prabhakara Rao

Counsel for Respondents 3 & 4: Government Pleader for Revenue

July 28, 2006

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing notification dated 9-7-2006 issued by State Election Commission for holding elections to various Gram Panchayats in the State, including A. Vemavaram Gram Panchayat, Amalapuram Mandal, East Godavari District.

Learned counsel for the petitioner argued that in terms of Article 243-E (1) of the Constitution read with Section 14 (3) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, the 1994 Act'), the petitioner, who took oath of office of Sarpanch of A.Vemavaram Gram Panchayat on 7-8-2004 is entitled to continue in office up to 6-8-2009, but, by virtue of the impugned notification, elections are being held for that Gram Panchayat and, if this is not stopped, her tenure will be curtailed. He submitted that the petitioner was not elected against a casual vacancy and, therefore, she is entitled to hold office for a period of five years.

In our opinion, there is no merit in the contention of the learned counsel and the writ petition is liable to be dismissed. A perusal of the record shows that in the election held for A. Vemavaram Gram Panchayat in August 2001, Smt.Mallavarapu Bujji was elected as Sarpanch. Her election was challenged by the petitioner by filing a petition in the Court of Principal Junior Civil Judge, Amalapuram, which was registered as O.P.No.6 of 2001. The petitioner pleaded that Smt.Mallavarapu Bujji was minor and, as such, she was not entitled to contest the election. By an order dated 10-1-2003, the Election Tribunal quashed the election of Smt.Mallavarapu Bujji and directed that fresh election be held. Writ petition filed against the order of the Election Tribunal was dismissed by the High Court. In

the consequential election held in August, 2004, the petitioner was declared elected. She took oath of office on 7-8-2004.

Article 243-E (1), (3) and (4) of the Constitution of India and Sections 13 and 14 (1), (2), (3) and (4) of the 1994 Act, which have bearing on the decision of this petition read as under:

"**243-E. Duration of Panchayats etc:**

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

…

(3) An election to constitute a Panchayat shall be completed- (a) before the expiry of its duration specified in Cl. (1) : (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Cl. (1) had it not been so dissolved.

Sections 13 & 14 of A.P. Panchayat Raj, Act, 1994

13. Term of office of members:

(1) Save as otherwise provided in this Act the term of office of members elected at ordinary elections shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary elections.

(2) Ordinary vacancies in the office of elected members shall be filled at ordinary elections which shall be fixed by the election authority to take place on such day or days within

three months before the occurrence of the vacancies, as he thinks fit:

Provided that the Andhra Pradesh Election Commissioner for Local Bodies may, for sufficient reasons to be recorded in writing, direct from time to time, the postponement or alteration of the date of an ordinary election or any stage thereof within the period of three months aforesaid and the election authority shall give effect to such direction.

(3)

(a) Every casual vacancy in the office of an elected member of a Gram Panchayat shall be reported by the Executive Authority to the Election Authority within fifteen days from the date of occurrence of such vacancy and shall be filled within four months from that date.

(b) A member elected in a casual vacancy shall enter upon office forthwith but shall hold office only so long as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(c) No casual election shall be held to a Gram Panchayat within six months before the date on which the term of office of its members expires by efflux of time.

14. Election and term of office of Sarpanch:

(1) There shall be a Sarpanch for every Gram Panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the Gram Panchayat, from among themselvesA person shall not be qualified to stand for election as Sarpanch, unless he is not less than twenty one years of age:

Provided that a Member of the Legislative Assembly of the State or of either House of Parliament who is elected to the office of Sarpanch or Upa sarpanch shall cease to hold such office unless within one month from the date of election to such office he ceases to be a Member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise.

(2) The election of the Sarpanch may be held at the same time and in the same place as the ordinary elections of the members of the Gram Panchayat.

(3) Save as otherwise expressly provided in, or prescribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the Election Authority for the first meeting of the Gram Panchayat after the ordinary election.

(4) Subject to the provisions of sub section (5) any casual vacancy in the office of the Sarpanch shall be filled within one hundred and twenty days from the date of occurrence of such vacancy, by a fresh election under sub section (1); and a person elected as Sarpanch in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

…"

A conjoint reading of the above reproduced provisions of the Constitution and the 1994 Act show that the tenure of every panchayat is five years, unless it is dissolved earlier. The use of the expression "no longer" in Article 243-E (1) makes it clear that the tenure of the panchayat cannot exceed five years. By virtue of Clause (3) of Article 243-E, an election to constitute a panchayat has to be completed before expiry of its duration specified in Clause (1). If a panchayat is dissolved before completion of five years tenure, then fresh election has to be held before expiry of six months from the date of dissolution. Clause (4) of Article 243-E lays down that a panchayat constituted upon dissolution of the earlier panchayat, which necessarily results in curtailment of the tenure of existing panchayat, would continue only for the remaining period. The term of office of members of the panchayat is five years from the date

appointed by the State Election Commissioner for the first meeting of the Gram Panchayat. After the ordinary elections, the casual vacancy of the member is required to be filled in accordance with sub-section (3) of Section 13. The tenure of a person elected against in a casual vacancy continues for the remaining period of the earlier member. The term of office of the Sarpanch elected at an ordinary election is five years from the date appointed by the election authority for the first meeting of the Gram Panchayat after the ordinary election (Section 14 (1) of the 1994 Act). Sub-section (4) of Section 14 lays down that a casual vacancy in the office of Sarpanch shall be filled by fresh election and a person elected as Sarpanch for any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred. The expression 'casual vacancy' is defined in sub-section (4) of Section 2 of the Act as meaning a vacancy occurring otherwise than by efflux of time and 'casual election' as meaning election held to fill a casual vacancy.

If the facts of this case are scrutinized in the backdrop of above analysis of the constitutional and legal provisions, it becomes clear that the petitioner does not have the right to continue in office up to 6-8-2009 and she is not entitled to seek a declaration of invalidity qua notification dated 9-7-2006. Undisputedly, ordinary election to the Gram Panchayat, A. Vemavaram was held in August 2001. The Sarpanch was also elected in August 2001. The first meeting of the Gram Panchayat was also held in the same month. The vacancy in the office of the Sarpanch occurred due to annulment of the election of the previous incumbent Smt.Mallavarapu Bujji in the year 2004. In other words, vacancy in the office of the Sarpanch of Gram Panchayat, A. Vemavaram arose otherwise than by efflux of time. Therefore, it was nothing but a casual vacancy within the meaning of

sub-section (4) of Section 2 of the 1994 Act. Therefore, the petitioner who was elected against that vacancy cannot claim to continue in office up to 6-8-2009.

For the reasons mentioned above, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

July 28, 2006
svs